IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 472

GALLAND-HENNING MANUFACTURING COMPANY,
Petitioner,

vs.

LOGEMANN BROTHERS COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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AUTHORITIES CITED.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Galland-Henning Manufacturing Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered May 25, 1944 (R. 208), reported in 142 Fed. 2d 700. A petition for rehearing was denied June 23, 1944 (R. 209).

A certified transcript of the record, including the proceedings in the said Circuit Court of Appeals, is furnished herewith, in accordance with the rules of this Court.

NOTE: Italics ours unless otherwise stated.

Summary Statement of the Matter Involved.

Petitioner, Galland-Henning Manufacturing Company, through its bill of complaint filed March 5, 1942 (R. 1) in the District Court of the United States for the Eastern Division of Wisconsin, sought an injunction and an accounting of profits and damages for infringement of petitioner's patent No. 1,932,041, granted October 24, 1933 to petitioner as assignee of the inventor, Henry Jacobson for Baling Press (R. 104).

Respondent filed an answer on May 25, 1942 (R. 3) in which it denied that the patent was granted for an invention, and asserted that it is invalid, and also that it had not been infringed by respondent.

Petitioner took pre-trial depositions of the president and two employees of respondent, and at the trial in open court both parties examined expert witnesses and offered in evidence numerous exhibits.

During the trial, the Court and counsel viewed baling presses involved in the controversy (R. 46).

At the conclusion of the trial, oral arguments and printed briefs were presented by both parties.

On July 16, 1943, the District Court filed its opinion (R. 85), carefully reviewing the evidence, and comparing the prior art baling presses with the press of the patent in suit and with respondent's press, and holding "*I am of the opinion that Jacobson's development constitutes invention*" (R. 86), and that "*I am of the opinion that the claims in question are valid*" (R. 87), but holding that "defendant's accused press does not infringe the claims of the patent in suit" (R. 88).

On August 6, 1943, the District Court filed Findings of Fact (R. 88) and Conclusions of Law (R. 90). The Court found as facts that what Jacobson had done over the prior

art "required considerable redesigning" (R. 88), and that *"Jacobson's development constitutes invention"* (R. 89), but that "The claims of the patent in suit are not readable upon the structure of Defendant's accused press" (R. 90).

The Court's Conclusions of Law included "A. The patent in suit is valid", and "C. The Defendant's accused press does not infringe the claims of the patent in suit" (R. 90).

On August 6, 1943 a final decree was entered, dismissing the bill of complaint for want of equity (R. 91).

On August 26, 1943, petitioner filed its notice of appeal to the Court of Appeals for the Seventh Circuit. Briefs for both parties were filed, and the cause argued orally April 6, 1944, before the said Court of Appeals.

During the oral arguments, the Appellate Court suggested that petitioner file a special brief on the question "Whether the Finding of Invention Is One of Fact or Law". Petitioner promptly filed such a brief, and respondent filed a reply thereto.

On May 25, 1944, the Appellate Court filed its opinion (R. 200; 142 F. 2d 700), affirming the judgment but disagreeing with the District Court both as to infringement and invention, holding that respondent had infringed the patent in suit, but that while the Jacobson patent covered an invention, it was the result of mere mechanical skill.

A petition for rehearing was duly filed, and denied on June 23, 1944 (R. 209).

Jurisdiction.

This is a suit arising under the Patent Laws of the United States, 35 U. S. C. Sec. 70, and the Judicial Code, 28 U. S. C. Sec. 41(7).

The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347).

Questions Presented.

1. Is Rule 52(a), 3rd sentence, of Rules of Civil Procedure, limited to evidentiary facts, or does it include ultimate facts?

2. Is it within the intent and purpose of Rule 52(a) of the Rules of Civil Procedure that an appellate court should set aside a finding of fact by the District Court, which the appellate court has not held to be "clearly erroneous", and which is supported by evidence including the testimony of witnesses in open court?

3. Is a finding by a district court that a patentee has made an invention a "Finding of Fact" within the meaning of Rule 52(a) of the Rules of Civil Procedure?

4. May "invention" in patent law be the result of mere mechanical skill?

Reasons for Granting the Writ.

The discretionary powers of this Court to grant a writ of certiorari are invoked under Rule 38 of this Court, for the following reasons:

1. The Seventh Court of Appeals has held in effect that Rule 52(a), 3rd sentence, is limited to evidentiary facts and does not apply to findings of ultimate facts.

2. The judgment rendered by the Circuit Court of Appeals involves an interpretation and application of Rule 52(a) of the Rules of Civil Procedure in conflict with decisions of other circuit courts of appeals, in holding that a finding of fact that an "invention" has been made is a

finding of fact only that mere mechanical skill has been exercised.

3. The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court in holding that a finding of fact of "invention" is not such a finding of fact as will not be set aside by an appellate court unless clearly erroneous.

4. The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings under Rule 52(a) of the Rules of Civil Procedure as to call for an exercise of this Court's power of supervision, in that it has set aside a finding of fact supported by evidence, including the testimony of witnesses in open court, and which finding the appellate court has not held to be "clearly erroneous".

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to the Court of Appeals for the Seventh Circuit should be granted.

GEO. L. WILKINSON,
Counsel for Petitioner.

Chicago, Illinois,

September ....., 1944.